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Security Council Committee established pursuant to resolution 1540 (2004)

Letter dated 13 September 2005 from the Deputy Permanent Representative of the United States of America to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004)

I have the honour to respond to your letter dated 29 June 2005, sent on behalf of the Security Council Committee established pursuant to resolution 1540 (2004). That letter asked the United States to clarify two matters discussed in our October 2004 submission to the Committee, which reviewed the efforts of the United States related to the implementation of resolution 1540 (2004) (see annex). We also have reviewed the matrix that accompanied your letter of 29 June 2005, and we will provide our proposed additions and revisions to that document under separate cover.

(*Signed*) Anne **Patterson**
Ambassador

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Annex to the letter dated 13 September 2005 from the Deputy Permanent Representative of the United States of America to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1540 (2004)

United States follow-up report to the Security Council Committee established pursuant to resolution 1540 (2004): efforts regarding Security Council resolution 1540 (2004)

In its June 29, 2005 letter to the United States, the Committee established pursuant to United Nations Security Council Resolution 1540 (2004) requested additional information on steps the United States has taken to implement its obligations under the resolution. The following information is provided to respond to this request.

1. National legislation or other legal measures your Government has implemented or intends to implement to prohibit any non-State actors to manufacture, acquire, possess, develop, transport, or transfer biological weapons and their means of delivery.

The following provide authority to prohibit exports to non-state actors to prevent such actors from acquiring, designing, developing, producing, stockpiling, or using chemical or biological weapons or acquiring their means of delivery.

- Export Administration Act, Section 6(m), as carried out under Executive Order 13222 (2001) (establishing authority for chem./bio. control list, license requirements, and countries of concern).

- Executive Order 12938 (1994), as amended by Executive Orders 13094 (1998) and 13382 (2005) (establishing authority for the Secretary of State to sanction any foreign person that has engaged or attempted to engage in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery).

- Export Administration Regulations at 15 C.F.R. Parts 742.2 (controls to prevent proliferation of chemical and biological weapons), and 744.4 (restrictions on certain chemical and biological weapons end-uses)

- Export Administration Act, Section 6(l) (establishing authority for restricting missile technology exports or means of delivery for weapons of mass destruction).

- Export Administration Regulations at 15 C.F.R. Parts 742.5 (restricting missile technology exports or means of delivery for weapons of mass destruction), 744.3 (establishing restrictions on exports, reexports, or transfers of certain rocket systems and unmanned air vehicles), 744.6 (a)(1)(i)(C) (restricting U.S. person's activities where person knows export may be used in design, development, production, stockpiling, or use of chemical or biological weapons), 744.6(a)(2)(ii) (restricting U.S. persons activities where person knows activity may directly assist in design, development, production, stockpiling or use of chemical or biological weapons), and 744.12-744.14 (prohibiting exports or reexports of dual-use items to designated terrorist organizations).

- Arms Export Control Act, Section 38 (establishing authority to control the export and import of defense articles and services), Executive Order 11958 (delegation to the Secretary of State of authority to promulgate regulations with respect to exports of defense articles and services).

- Arms Export Control Act (22 U.S.C. § 2778) (establishing authority to control arms exports and imports, including chemical and biological agents for such weapons).

- International Traffic in Arms Regulations (22 C.F.R. Parts 120-130). See 22 C.F.R. Parts 121.1 (identifying chemical and biological agents as defense articles), 123.1 (requiring licenses for exports and temporary imports of all defense articles), 127.1 (identifying ITAR violations), and 127.3 (establishing penalties for ITAR violations).

- 18 U.S.C. § 175 (establishing criminal penalties for anyone who knowingly develops, produces, stockpiles, acquires, retains, or possesses a biological agent, toxin, or delivery system for use as a weapon or for anyone who knowingly assists a foreign state or any organization to do so), 18 U.S.C. § 229 (prohibiting any person from developing, producing, otherwise acquiring, transferring, or indirectly receiving, stockpiling, retaining, owning, possessing or using or threatening to use any chemical weapon and establishing criminal penalties).

- The Bioterrorism Act of 2002 (Public Law No.107-188) and associated regulations of U.S. Customs and Border Protection and the U.S. Food and Drug Administration also are relevant to this area.

Additionally, on June 29 of this year, the President of the United States issued Executive Order (E.O.) 13382 to combat weapons of mass destruction (WMD) trafficking by authorizing the blocking or "freezing" of assets of persons engaged in proliferation activities and their supporters. Persons that are designated under the E.O. will be denied access to the U.S. financial and commercial systems, and U.S. persons, wherever located, will be prohibited from engaging in transactions with them. The new E.O. complements existing U.S. proliferation-related authorities, including E.O. 12938, as amended, that prohibit certain economic transactions and assistance to WMD proliferators. Among other things, E.O. 13382 blocks all property and interests in property in the United States or in the possession or control of United States persons of: (i) persons listed in the Annex to the order; (ii) any foreign person determined by the Secretary of State (Secretary), in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of WMD and their means of delivery; (iii) any person determined by the Secretary of the Treasury, in consultation with the Secretary, the Attorney General, and other relevant agencies, to have provided financial, material, and technological support for transactions that have materially contributed to the proliferation of WMD; and (iv) any person determined by the Secretary of the Treasury, in consultation with the Secretary, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting for, any person whose property or interests in property are blocked pursuant to the order.

Further, the new E.O. is designed to advance initiatives to disrupt the financial flows and networks that support WMD trafficking. It is modeled after the U.S. terrorism financing Executive Order (E.O. 13224 of September 23, 2001), which is a primary U.S. tool for combating terrorism financing and implementing UN Security Council Resolution 1267 and subsequent resolutions relating to al-Qa'ida, the Taliban, and those who support them. It is intended to support international cooperative efforts against WMD financing, including with our G-8 partners and through the Proliferation Security Initiative (PSI). It is also intended to serve as a model for other nations adopting new measures against WMD proliferation financing, consistent with their obligations under United Nations Security Council Resolutions, including UN Security Council Resolution 1540.

2. Laws and regulations as well as law enforcement efforts your Government has taken or intends to take to review national transit and transshipment controls, including appropriate penalties for violations of control, over nuclear, chemical, or biological weapons and their means of delivery, including related materials.

The following provide authority for controls on items in transit and transshipment and penalties for violations thereof:

- Export Administration Act, Section 11 (establishes criteria for violations of the export controls and penalties) and Section 16(5) (defining the term "export" to include transfer of goods or technology out of the United States).

- International Emergency Economic Powers Act (IEEPA), Executive Order 13222 (2001).

- Export Administration Regulations at 15 C.F.R. Parts 764.2 and 764.3 (providing legal basis for violations of the EAR and associated penalties).

- Export Administration Regulations at 15 C.F.R. Parts 734.2(a)(1)-(2) (providing authority for controlling items transiting the United States), 740.9 (providing a license exception for temporary imports, exports, or reexports and authority over such goods and technology), and 744.6 (prohibiting transfers by U.S. persons where they have knowledge that the item will be used in design, development, production, use, or stockpiling of nuclear explosive devices, missiles in restricted countries, or chemical and biological weapons).

- Arms Export Control Act (22 U.S.C. § 2778) (establishing authority to control transfers of defense articles and services).

- International Traffic in Arms Regulations (22 C.F.R. Parts 120-130). See Parts 120.19 (defining "reexport" or "retransfer" as transfer of defense article or service not previously authorized), 123.9 (stating country of ultimate destination required on license application and approval required for reexports or retransfers), 123.10 (restricting transfers and requiring use assurances for significant military equipment), 127.1 (identifying ITAR violations), and 127.3 (establishing penalties for ITAR violations).

Key U.S. agencies work to control the export of articles, technical data, and services specifically designed for military application pertaining to nuclear, chemical, and biological weapons, and their means of delivery. Category XIV of the U.S. Munitions List controls toxicological agents, including chemical agents, biological agents, and associated equipment. The chemical agents controlled include nerve agents, vesicant agents, chemical agent binary precursors and key precursors, tear gasses and riot control agents, and defoliants. The category also controls biological agents and biologically derived substances specifically modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment, or damage crops. Category XVI of the U.S. Munitions List controls articles, technical data, and services used in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. Means of delivery, be they missile systems, aircraft, artillery, or specially designed dissemination equipment, are controlled by various categories of the U.S. Munitions List. All proposed exports are subject to a strict case-by-case review in which the bona fides of the exporter, intermediate consignees, and end user, as well as the end use, are established prior to authorization to export. Strict retransfer requirements establish the continuity of U.S. licensing authority over authorized exports.

Key U.S agencies work with their counterparts in key transshipment destinations to: (1) develop and strengthen indigenous trade compliance and export control regimes; (2) promote the exchange of data that would enhance both U.S. and transshipment hub commerce and export control efforts; and (3) strengthen cooperation between U.S. and host country agencies that would facilitate more effective enforcement of U.S. export control laws. U.S. agencies also work with industry – in particular, large multinational companies involved in the transportation of goods through transshipment country hubs – to enlist their support in preventing illicit transshipments. Key U.S. agencies also provide international training to foreign law enforcement officials to strengthen international cooperation and export controls and U.S. national security.

In addition, existing border examination authorities under the Tariff Act of 1930, the Immigration and Nationality Act of 1950, the Export Administration Regulations, and the International Traffic in Arms Regulations, provide that any person or cargo entering or leaving United States territory, including in transit, is subject to border examination to ensure compliance with these licensing requirements and other laws. See, for example, 19 U.S.C. §§ 482, 1467, 1499, and 1581, and 22 U.S.C. § 401.

Moreover, the Energy Policy Act of 2005, which was signed into law by President Bush on August 8, 2005, includes several provisions (sections 651-657), which enhance security requirements for nuclear facilities and materials and expand the Nuclear Regulatory Commission's enforcement authority.